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APPENDIX

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Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-6852

DONALD PAUL LUBIN, ETC.

Petitioner,

—v.—

LEONARD PANISH,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JUNE 16, 1972
CERTIORARI GRANTED MAY 7, 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

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[Clerk's Certificate Omitted in Printing]

DOCKET ENTRIES

Petition for Writ of Mandate, Declaration of Donald Paul Lubin, and Memorandum of Points and Authorities filed March 16, 1972

Demurrer and Points and Authorities filed March 20, 1972

Order Denying Petition for Writ of Mandate filed March 22, 1972

[Title Page Omitted in Printing]

CALIFORNIA SUPREME COURT

No. ———

[Attorneys' Names and Title of Cause Omitted in Printing]

PETITION FOR WRIT OF MANDATE

Petitioner DONALD PAUL LUBIN petitions this Court for a Writ of Mandate directed to respondent JAMES S. ALLISON, Registrar-Recorder of the County of Los Angeles, and by this certified petition alleges:

FIRST CAUSE OF ACTION

I

Petitioner DONALD PAUL LUBIN is, and at all times mentioned in this petition was a citizen, voter, and candidate for nomination to election to the Board of Supervisors for Los Angeles County who cannot afford the filing fee required for said office, as indicated by the affidavit filed herein. He brings this petition individually and on behalf of all citizens, voters and candidates and others similarly situated who are too numerous to be named and brought before this Court as petitioners. Petitioner meets the legal qualifications to have his name placed on the ballot as a candidate, except that he is unable to pay the filing fee. As a citizen, voter, and candidate, petitioner is within the class of persons beneficially interested in respondent's faithful performance of his legal duty hereafter alleged.

II

Respondent JAMES S. ALLISON is the Registrar-Recorder of the County of Los Angeles, and as such, is charged under the provisions of California Elections

Code Sections 6551 and 6554 with the initial collection of filing fees for political candidates. He is the person who certifies candidates for Los Angeles County supervisorial districts whose names shall appear upon the ballots in general and primary elections.

III

In order to appear on the ballot in a primary election, a candidate must: (a) deliver a prescribed "Declaration of Candidacy" or, in the alternative, a prescribed "Declaration of Candidacy by Sponsors," accompanied by a "Declaration of Acceptance of Nomination," to the County Clerk of the County in which he resides no later than 74 days before the primary election is to be held; and (b) deliver the required number of "Sponsors' Certificates" for the particular office he seeks to the County Clerk of the County in which he resides no later than 74 days prior to the date of the primary election. For the office of County Supervisor, the Declarations of Candidacy and accompanying Sponsors' Certificates shall be accepted by the County Clerk for filing in his own office.

All forms required for nomination and election to all County offices are furnished only by the County Clerk of the County in which the candidate resides. At the time of issuance of those forms, the County Clerk is directed by statute to type onto the forms the name of the candidate and the office for which he is a candidate, and to imprint a stamp which reads "Official Filing Form," and to affix his signature. The official forms so prepared are to be distributed only upon the prepayment of the filing fees provided for in Section 6554 of the California Elections Code. The filing fees are not to be refunded in the event that the candidate fails to qualify as a candidate. The County Clerk is directed to transmit the collected filing fees to the County Treasurer.

IV

On or about February 15, 1972, petitioner appeared at the office of respondent JAMES S. ALLISON to apply

for and secure a Declaration of Candidacy, Certificates of Sponsors, a Statement of Qualification, and all other necessary nomination papers requisite for his candidacy for the Board of Supervisors for Los Angeles County.

Petitioner demanded that said nomination papers be provided him by said respondent, but petitioner was refused the issuance of said nomination papers orally and in writing solely because petitioner was unable to pay certain filing fees required by Sections 6551 and 6554 of the California Elections Code. Said fees are $701.60 for a candidate for Board of Supervisors of Los Angeles County.

V

The refusal of respondent was void, unconstitutional, and beyond the power or jurisdiction of respondent and a prejudicial abuse of discretion in that the filing fee requirement and the enforcement thereof serve to deny to the petitioner and members of his class, the opportunity to seek public office solely because of their economic station and constitutes an invidious discrimination against the poor citizens of our society. This denial of the right to seek public office deprives petitioner and members of his class the equal protections of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution. Further, the refusal of respondent denies petitioner and all members of his class the opportunity to vote for candidates of their choice solely because their candidates may be too poor to pay the requisite filing fees. This, too, deprives petitioner and members of his class of the equal protections of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution, and the right of free expression and association for the advancement of political beliefs guaranteed by the First and Fourteenth Amendment.

VI

Notwithstanding the demands of petitioner that respondent perform the acts set forth herein, respondent wrongfully failed and refused and continues to fail and

refuse to issue to petitioner the necessary nomination papers for candidacy to the Board of Supervisors of Los Angeles County. Unless compelled to do these acts by this Court, respondent will continue to fail and refuse to do so.

VII

That heretofore on February 17, 1972, petitioner with others filed a Petition for Writ of Mandate, Case No. C-23138 in the Los Angeles County Superior Court, and an Alternative Writ of Mandate and a Temporary Restraining Order were issued by Judge John Cole for hearing on March 6, 1972, in Department 65.

At said hearing, Judge Robert A. Wenke denied the Writ of Mandate.

VIII

That immediately thereafter, petitioner and others filed a Petition for Writ of Mandate, Case No. 39950, in the Court of Appeal, 2nd District. That it was denied by postcard decision on March 9, 1972.

IX

That on March 9, 1972, a Federal three-man Court sitting in San Francisco in the case of *Chote* vs. *Edmund G. Brown, Secretary of State,* declared Congressional and State filing fees to be unconstitutional with respect to indigents.

X

That on March 10, 1972, petitioner believes, and alleges on the basis of said belief, a telegram was sent to respondent by Edmund G. Brown, Secretary of State and Evelle J. Younger, Attorney General, instructing him not to collect fees for Congressional and State offices from persons swearing that they were indigents.

XI

That on March 10, 1972, respondent, on the advice of County Counsel John Miharag, accepted for filing without fees the nomination papers of all of the Petitioners in the aforementioned actions in Los Angeles Superior Court and Court of Appeal with the exception of petitioner; as to petitioner who was running for a local office, respondent accepted the nomination papers, but stated that he would not file them until ordered to do so by a Court.

XII

That the Court Reporter on the request of counsel prepared her notes of the hearing before Judge Robert A. Wenke on March 6, 1972 and said notes were deposited with the Court of Appeal. Counsel will request that they be transmitted with this Petition.

XIII

Petitioner has no plain, speedy, and adequate remedy at law other than the relief sought in this petition. The fact that the ballot is to be printed by March 28, 1972, underscores petitioners' lack of adequate and speedy remedy.

XIV

As a result of the actions of respondent herein described, petitioner has sustained irreparable damage in that petitioner and all members of his class have been deprived the opportunity to run for public office and for the opportunity to vote for the candidates of their choice solely because of petitioner's economic station and financial condition, and petitioner will continue to be irreparably harmed unless the respondent is compelled to perform his legal duties and required to process the nomination papers of petitioner.

SECOND CAUSE OF ACTION

XV

Petitioner repeats, realleges and incorporates by reference each and every allegation contained in Paragraphs I-XIV.

XVI

The refusal of respondent was void, unconstitutional and beyond the power or jurisdiction of the respondent, and a prejudicial abuse of discretion, in that the filing fees required by Section 6554 are totally unrelated to the rights and duties attributable to the candidates and are not germane to one's ability to participate intelligently in the electoral process.

XVII

There is no compelling state interest to justify the infringement on the rights of free speech and association for political action protected by the First and Fourteenth Amendment of the United States Constitution.

XVIII

If respondent is not compelled to perform his legal duties to process all necessary nomination papers of petitioner, petitioner both as a candidate and as a voter will irreparably be harmed.

XIX

WHEREFORE, petitioner prays that:

1. A Writ of Mandate issue under the seal of this Court commanding respondent JAMES S. ALLISON, his officers, agents and all other persons acting on his behalf to process all necessary nomination papers of the petitioner and any members of his class in regard to his candidacy to the Board of Supervisors of Los Angeles County without the payment of filing fees as a condition precedent thereto;

2. That the time for service of notice of hearing on this Writ be shortened so that hearing may be had on or before March 25, 1972;

3. Petitioner recovers costs of this action;

4. The Court grant such other and further relief as it may deem just and proper.

Dated: March 16, 1972.

MARGUERITE M. BUCKLEY

[Verification Omitted in Printing]

[Proof of Service Omitted in Printing]

[Title Page Omitted in Printing]

DECLARATION OF DONALD PAUL LUBIN

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, DONALD PAUL LUBIN, say:

1. I am a citizen of the United States.

2. I am a duly registered voter in the County of Los Angeles, having continuously resided in the same Electoral Precinct since the last date upon which I registered to vote.

3. I filed a Declaration of Candidacy for the office of Board of Supervisors from the 4th District, and have circulated on my behalf sponsors' certificates for such office in order that I could qualify as a candidate for such office in the primary election to be held on June 6, 1972.

4. I secured official forms for Declaration of Candidacy and Sponsors' Certificates from the Registrar-Recorder of Voters in the County of Los Angeles pursuant to Court Order, but said official on March 10, 1972, refused to file such forms and certificates without the payment of fees.

5. I am unable to afford the $701.60 filing fee required to be paid by a candidate for the aforementioned office, under the provisions of Sections 6551, *et seq.*, of the California Elections Code.

6. My assets, other than clothing, personal effects, and miscellaneous household furniture and furnishings, consist of

> an old car, of the approximate value of $200; and an undivided one half (½) interest in a house in Boston, Massachusetts, which we have been unable to find a purchaser for—my equity may be $0. to $2500.

7. At the present time my debts are:

None.

8. My annual income during the year 1971 was the sum of $3,600; and my average monthly income during the year 1972 has been the sum of $ None.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Donald Paul Lubin
DONALD PAUL LUBIN

Executed on March 16, 1972, at Los Angeles, California.

[Title Page Omitted in Printing]

CALIFORNIA SUPREME COURT

No. ———

[Attorneys' Names and Title of Cause Omitted in Printing]

POINTS AND AUTHORITIES—Filed March 16, 1972

STATEMENT

Petitioner seeks to have the filing fee provisions of the California Elections Code invalidated on three basic grounds. First, he as a poor citizen of the State of California is effectively denied the right to run for office by the requirement of filing fees, for which California provides no alternatives. By taking this fundamental right from a chronically disadvantaged group, the State is denying him and members of his class equal protection of the laws under the Fourteenth Amendment. Second, he as a voter is denied the right to vote for persons who have the similar interests and experience and thus could be more truly representative of his situation. This violates his rights to free speech and association for obtaining political goals under the First Amendment as well as depriving him of equal protection under the Fourteenth Amendment. Third, basic constitutional rights cannot be infringed by the State unless there is a compelling state interest and there is no such compelling state interest in the California filing fee provisions. To the contrary, the State is using filing fees as a means of raising revenue solely and therefore the provisions are constitutionally invalid.

On February 17, 1972, petitioner with others filed a Petition for Writ of Mandate against the Secretary of State and the Los Angeles County Registrar-Recorder in the Los Angeles Superior Court, being case No. C-23138. The suit was filed in their behalf and that of all those similarly situated, being poor persons who wished to run for political office but were unable to pay the filing fees.

Judge John Cole signed an Alternative Writ of Mandate which was set for hearing on March 6, 1972—just four days prior to the filing deadline.

On March 6, 1972, Judge Robert A. Wenke sitting in Department 65 of the Los Angeles Superior Court denied the Petition for Writ of Mandate, interpreting *Bullock* vs. *Carter*, as merely prohibiting unreasonable fees. Judge Wenke stated that a welfare person who really was serious about running could find the money.

On March 9, 1972, a second Petition for Writ of Mandate was denied by the Court of Appeal, 2nd District.

On March 9, 1972, a Federal three-man Court sitting in San Francisco in the case of *Chote* v. *Brown* declared Congressional and State filing fees unconstitutional as to indigents.

Following that decision, Edmund G. Brown, Secretary of State, notified all county registrars that he would not be collecting filing fees from persons who were indigents.

Respondent has accepted filings from indigents in all State and Congressional races, but declined to file petitioner's nominating papers without further Court order because it was a local race. Unless such an order is obtained prior to March 28, 1972, he will be barred from participating in both the June primary and a run-off if one becomes necessary.

I

AFTER DENIAL OF A PETITION FOR WRIT OF MANDATE, PETITIONER MAY FILE A SECOND PETITION IN AN APPELLATE COURT.

A petitioner may file a second Petition for a Writ of Mandate in an Appellate Court after denial of relief by the Superior Court. To do so, he must show that the appellate remedy is inadequate. *Farley* v. *Healey* (1967) 67 C2d 325; *Caputo* v. *Municipal Court* (1960) 184 CA 2d 412.

In the instant case, relief was denied by both the Los Angeles Superior Court and the Court of Appeal, 2nd District, based on an erroneous interpretation of *Bullock*

v. *Carter*, —— U.S. —— (No. 70-128) decided February 24, 1972. Unless petition can obtain a hearing prior to March 28, 1972, he will be barred from participating in the elections of 1972.

An appeal from such decision, while it will not render the matter moot, would be meaningless in terms of relief for petitioner.

II

FILING FEE PROVISIONS OF THE CALIFORNIA ELECTIONS CODE DEPRIVE PETITIONER OF THE EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT.

The right to run for public office has been affirmed in several cases recently. The right to seek public office is a fundamental right which the State cannot take from candidates solely because they cannot afford a filing fee. *Wong* v. *Mihaly*, 332 F.Supp. 165 (San Francisco 1971), *Jenness* v. *Little*, 306 F.Supp. 925 (N.D. Ga. 1969); *Fisher* v. *Taylor*, 196 S.W.2d 217 (S.Ct. Ark. 1946). See also *State* v. *Wilson*, 150 S.E.2d 592, 597 (S.Ct. of App. W.Va. 1966); *Kautenburger* v. *Jackson*, 333 P.2d 293, 294 (S.Ct. Ariz. 1958).

In *Thomas* v. *Mims*, 317 F.Supp. 179 (S.D. Ala. 1970), a United States District Court invalidated an Alabama statute requiring a registration fee of 2% of the annual salary for a municipal office under the equal protection clause of the Fourteenth Amendment. The Court affirmed the right to vote and to seek political offices as fundamental rights.

Once it is determined that the right to be a candidate is a fundamental right, any regulations which deny access to public office to a chronically disadvantaged group constitute discrimination and work as a denial of the equal protection of the laws. Filing fees which bear no reasonably relationship to the office being sought or the person's qualification therefor constitute a legislative guarantee that a "politically voiceless and invisible minority" remain in that disadvantaged condition. Denied access to seek public office, they are denied the ability to

use elections and the electoral process as a means of drawing the public's attention to their plight, to the causes which create poverty and the problems that accompany them. *Hobson* v. *Hansen*, 269 F.Supp. 401 (D. D.C. 1967), *aff'd as modified Sub.Nom. Smuck* v. *Hobson*, 408 F.2d 175 (D.C.Cir. 1969).

Bullock, et al. v. *Carter, et al.*, was decided by the U.S. Supreme Court on February 24, 1972.

The decision is somewhat ambiguous and should be read in the light of the decision of the Federal Court as set forth in 321 F.Supp. 1358 (N.D. Texas 1970).

It has been specifically applied to California in the case of *Chote* v. *Brown* (decided March 9, 1972). Judge Wollenberg sitting on a three-man Federal Court stated that California fees were not reasonable because they were related to the salary for the job and not the expenses of filing, and because they made no alternative provisions for indigents.

While Texas had election fees ranging as high as $8,900, it also had some lower than those in California. As the Court noted at page 2 in *Bullock* v. *Carter*— "payment of the filing fee is an absolute prerequisite to a candidate's participation in a primary election. There is no alternative procedure by which a potential candidate who is unable to pay the fee can get on the primary ballot by way of petitioning voters, and write-in votes are not permitted in primary elections for public office. Any person who is willing and able to pay the filing fee and who meets the basic eligibility requirements for holding the office sought can run in a primary."

The Lower Court invalidated the Texas filing fees and Judge Wm. M. Taylor, Jr. said at page 1362: "We have limited our decision here to say that a filing fee violates the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used *as a revenue collecting device or when made an absolute qualification* in order for a candidate to get his name on the ballot." (Our emphasis.)

The U.S. Supreme Court chose to limit its decision to the equal protection clause of the Fourteenth Amendment. The decision emphasized that while the State may deter-

mine voter qualifications and the manner of elections, this power must be exercised in a manner consistent with the equal protection clause.

The Court at page 8 indicated that it had not theretofore attached the same fundamental status to candidacies as to voting. "However, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review."

In the instant case, in denying the Petition for Writ of Mandate, Judge Wenke chose to interpret the decision as merely affirming the right of the State to charge reasonable fees, quoting from page 15. "It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts." He neglected to include the next sentence. "By requiring candidates to shoulder the costs of conducting primary elections through filing fees and *by providing no reasonable alternative means of access to the ballot*, the State of Texas has erected a system which *utilizes the criterion of ability to pay as a condition to being on the ballot*, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice." (Our emphasis.)

The California Elections Code provides no alternatives to paying the filing fees in order to qualify for election. Even before write-in votes will be counted, the filing fees must be paid under Elections Code Section 6555.

By focusing upon this factor of one's wealth, the Code results in blatant, invidious and harmful discrimination upon indigent, but otherwise qualified, persons who seek elective office. This violates the requirements of equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

In 1970, a Federal District Court in Georgia held that to require an indigent candidate to pay a qualifying fee with no other means of getting on the ballot was a viola-

tion of the equal protection. *Georgia Socialist Workers Party* v. *Fortson*, 315 Supp. 1035 (N.D. Ga. 1970).

Recently in San Francisco, in the case of *Wong* v. *Mihaly*, 332 F.Suppl. 165 (1971), municipal filing fees identical to those in question here (2% of the salary for the office) were ruled invalid as to poor people. Judge Wollenberg discussed the problem of the serious candidate: "The proposition that every serious candidate will be able to pay the fee required cannot be accepted without question. . . . There is, in fact, much to suggest that money and seriousness of candidacy are not always to be found in the same office seeker. On the other hand, it is clear beyond question here that the man who cannot pay, no matter how serious he is, cannot place his name in nomination."

The State and Federal Courts have been steadily broadening the equal protection clause of the Fourteenth Amendment to insure that poor people are not deprived of the benefits of this society solely because of their lack of wealth.

Persons cannot be discriminated against because of poverty. *Griffin* v. *Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956) (transcripts); *Boddie* v. *Connecticut*, 401 U.S. 388, 91 S.Ct. 780 (1971) (divorce); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079 (1966) (poll tax); *Tate* v. *Short*, 401 U.S. 395, 91 S.Ct. 668 (1970) (parking fines); *In Re Kraus*, 331 F.Supp. 1207 (1971) (bankruptcy); *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969).

In California, the Court has also recognized the principle that persons cannot be discriminated against solely because of the lack of wealth. *In Re Fry*, 19 C.A.3d 177.

In *Ferguson* v. *Keays*, 4 C.3d 649, 94 Cal. Rptr. 398, 484 P.2d 70 (1971), the Court approved in principle the waiver of the $50 fee for filing a record on appeal despite the argument (analogous to that advanced by respondents) that filing fees (appellate) defray the cost of Courts and discourage unnecessary litigation.

If the poor cannot be discriminated against in these areas, how can this Court sustain a similar argument for the equally important right to run for office?

The Supreme Court of California declared unconstitutional the denial of voting rights to non-property holders in the election of directors to a municipal district in *Burrey* v. *Embarcadero Municipal Improvement District*, —— Cal.3d ——, 97 Cal Rptr 203 (1971). The Court held that a legislative classification which discriminates on the basis of wealth constitutes a "suspect classification" and "can be sustained, if at all, only by the most compelling of state interest," at page 208.

This Court has also defined classification based upon wealth as a violation of the equal protection clause in *Serrano* v. *Priest*, 5 Cal.3d 584, 96 Cal Rptr 601 (1971), starting at p. 597:

> "In recent years, the United States Supreme Court has demonstrated a marked antipathy toward legislative classifications which discriminate on the basis of certain 'suspect' personal characteristics. One factor which has repeatedly come under close scrutiny of the high court is wealth. 'Lines drawn on the basis of wealth or property, like those of race (citation), are traditionally disfavored.' "

III

THE FILING FEE PROVISIONS OF THE CALIFORNIA ELECTIONS CODE VIOLATE THE FIRST AMENDMENT RIGHTS OF FREE SPEECH AND ASSOCIATION AS WELL AS THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In the leading case of *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 86 S.CtC. 1079, 16 L.Ed. 2d 169 (1966), the Supreme Court in evaluating Virginia's poll tax concluded that a state violates the equal protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. The Court said at page 668:

> ". . . The principle that denies the State the right to dilute a citizen's vote on account of his economic

status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay."

The right to vote is one of the most precious and important rights available to people in a democracy and as such is guaranteed by the First Amendment. *Harper* v. *Virginia State Board of Elections*, supra, p. 5.

As early as 1905, the Supreme Court of Nebraska struck down its election filing fees in the case of *State* v. *Drexel*, 105 N.W. 175 (1905) on the grounds that the filing fee operated as a substantial impairment of the right of the electorate to choose freely its candidates for public office.

IV

THE STATE OF CALIFORNIA AND THE COUNTY OF LOS ANGELES DO NOT HAVE SUCH COMPELLING INTERESTS AS TO INTERFERE WITH THE RIGHTS OF FREE SPEECH AND ASSOCIATION PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS.

In California the Elections Code Section 6556 provides that the County Clerk must turn over to the County Treasurer all funds collected pursuant to Section 6554. Whereas the fees for State and Federal offices collected pursuant to Section 6552 are at least intended (under Section 6556) to support the "State Commission on Voting Machines and Vote Tabulating Devies to the extent that appropriations are made in the Budget Act from year to year," (although no such appropriations have even been made), the fees collected for County offices under Section 6554 have no specific intended use whatsoever and amount to a revenue-raising device.

Whenever a First Amendment right is being encumbered by the state, the burden is on the state to show that such infringement is necessary to support *a compelling* state interest. *Williams* v. *Rhodes*, 393 U.S. 30, 89 S.Ct. 10 (1969); *Kramer* v. *Union Free School District*, 393 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d 585 (1969).

In *Williams* v. *Rhodes*, the test devised included important elements: (1) the facts and circumstances behind the law, (2) the interest which the state *claims* to be protecting, and (3) the interests of those who are disadvantaged by the classification.

In the case of *McLaughlin* v. *Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964), the Court indicated that the collection of revenue was a legitimate interest of the state. However to qualify as *a compelling* state interest, the law must be "necessary, and not merely rationally related to the accomplishment of a permissible state policy." In 1970 the Court in *Carter* v. *Dies*, 321 F.Supp. 1358 (N.D. Texas 1970) (decided in U.S. Supreme Court cited as *Bullock* v. *Carter*, supra, page 4) listed approximately 18 states that do not require candidates to pay any filing fees. These states include: Colorado, Indiana, Iowa, Illinois, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee and Vermont. If these states, including some of the largest in the country, do not find a compelling reason to use elections to collect revenue, it casts some doubt on California's use of this technique.

Filing fees as a means of raising revenue are notoriously deficient, weighing the small amount of revenue available to the state as opposed to the very heavy burdens placed upon the individuals who wish to exercise their constitutionally protected rights to vote and run for office.

In sum, it appears that the weight of authority has tipped to support the proposition that filing fees are an unconstitutional inhibition on the rights of indigent candidates and voters alike.

Respectfully submitted,

MARGUERITE M. BUCKLEY
Attorney for Petitioner

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. L.A. 29982

[Filed March 20, 1972]

[Title of Cause and Attorneys Names Omitted in Printing]

DEMURRER AND POINTS AND AUTHORITIES

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DEMURRER AND POINTS AND AUTHORITIES—

Filed March 20, 1972

Comes now, the Respondent, in the above entitled action and demurs to the Petition for Writ of Mandate on the following grounds:

I

The petition does not state facts sufficient to constitute a cause of action.

II

The petition is uncertain in that it is impossible to tell from Paragraph XI of the First Cause of Action, or in any other allegation in the petition whether petitioner tendered to respondent a nomination paper or not and, if he did so, how he could do so when he alleged in Paragraph VI of his First Cause of Action that the respondent wrongfully failed and refused and continues to fail and refuse to issue to petitioner the necessary nomination paper for candidacy for Board of Supervisor of the County of Los Angeles.

WHEREFORE, respondent prays that the petition be dismissed.

JOHN D. MAHARG
County Counsel

EDWARD H. GAYLORD
Division Chief

and

JOE BEN HUDGENS
Deputy County Counsel

By /s/ Edward H. Gaylord
EDWARD H. GAYLORD
Attorneys for Respondent

EHG/ec
3/17/72

POINTS AND AUTHORITIES

OPENING STATEMENT

Petitioner who earned no money this calendar year, whose supporters (if any) are not sufficiently enthusiastic to contribute towards the small filing fee required, contends that he is a serious candidate for supervisor for the most populous county in this country, where he will represent a supervisorial district of substantially more than a million persons, and that the reasonable filing fee imposed is unconstitutional despite the fact that this Court has twice rejected this contention.

I

A STATE MAY REQUIRE A REASONABLE FILING FEE FROM ALL CANDIDATES IN A PRIMARY ELECTION BY REASON OF THE CLEAR LANGUAGE OF THE SUPREME COURT IN *BULLOCK* v. *CARTER*

The Supreme Court in *Bullock* v. *Carter*, 40 Law Week 4211, affirmed the judgment of the three-judge federal trial court in *Carter* v. *Wischkaemper*, 321 F. Supp. 1358 (N.D. Tex. 1970). At issue was the Texas system of laws which required of appellees filing fees of $1,000-6,300 to be paid to the county executive committee of the political party conducting the primary. In effect, the entire burden of financing primary elections was placed on the candidates rather than on a government unit.

The court reasoned that barriers to candidate access to the primary ballot do not as such compel close scrutiny. 40 Law Week at 4214.

But the court then noted:

> "Unlike a filing fee requirement which most candidates could be expected to fulfill from their own resources or at least through modest contributions, the very size of the fees imposed under the Texas system gives it a patently exclusionary character. * * *"

The court then appears to conclude that because the excessively high fees have such an impact upon the economic status of candidates, and their backers, the Texas laws must be " 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." 40 Law Week at 4214, right hand column. While recognizing that the State has a legitimate interest to avoid the clogging of its election machinery, to avoid voter confusion, to avoid overcrowded ballots, and to protect the integrity of its political processes from frivolous or fraudulent candidacies, the court concluded that the large fees required by Texas were not reasonably necessary to protect those valid interests. The court then recognized a legitimate State objective in requiring filing fees to relieve the State Treasury of a portion of the cost of conducting the primary elections, but the court held that there was no *necessity* that the candidate pay his apportioned share of the entire primary. The court concluded:

> "* * * It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts. * * *" 40 Law Week at 4216, left hand column.

The court apparently rejected the reasoning of the majority opinion of the trial court that the Texas filing fee system violated the First Amendment and the due process clause of the Fourteenth Amendment. (*See*: 321 F.Supp. at 1362.) Also, the Supreme Court opinion never mentions the "compelling state interest" requirement relied upon by petitioner herein and by some of the lower federal courts, upon whose decisions petitioner relies. It appears that the Supreme Court adopted at least in part the reasoning of the concurring opinion of Justice Thornberry in the court below that the State interest could justify only reasonable fees designed to compel contribution by a candidate to a reasonable portion of the primary expenses attributable to his candidacy. (*See*: 321 F.Supp. pp. 1363-65.)

At page 7 of his Points and Authorities petitioner says:

> "In the instant case, in denying the Petition for Writ of Mandate, Judge Wenke chose to interpret the decision as merely affirming the right of the State to charge reasonable fees, quoting from page 15. 'It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts.' He neglected to include the next sentence. 'By requiring candidates to shoulder the costs of conducting primary elections through filing fees and *by providing no reasonable alternative means of access to the ballot*, the State of Texas has erected a system which *utilizes the criterion of ability to pay as a condition to being on the ballot*, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice.' (Our emphasis.)"

In the second sentence the court was discussing not reasonable fees but the unreasonable Texas fees. The court cites the analogy of license fees when it refers to:

> "* * * or licensing fees in other contexts."

We are unaware of any statute or ordinance providing a method of obtaining a license without the payment of the required fee or of any decision holding such an alternative to be necessary.

The Supreme Court certainly did not hold, as petitioner appears to contend here, that any candidate filing fee is presumed invalid as applied to candidates who do not have personal assets sufficient to pay the fee.

California requires only reasonable fees of candidates and such fees defray only a small portion of the total election expense. As we read *Bullock* v. *Carter*, we have no doubt that the United States Supreme Court would uphold the reasonable California filing fees challenged herein.

II

THIS COURT HAS TWICE HELD VALID THE REQUIREMENT OF THE FEES IMPOSED.

A. Socialist Party v. *Uhl.*

At the top of page 11 of his Points and Authorities the petitioner cites and relies upon *State* v. *Drexel*, 74 Neb. 776, 105 N.W. 174. The decision in that case has twice been rejected by this Court. *Cross* v. *Bruning*, S.F. 21655 (unreported) (Appeal dismissed, 379 U.S. 202, 85 S.Ct. 340, 13 L.Ed.2d 339); *Socialist Party* v. *Uhl* (1909) 155 Cal. 776 at bottom of page 790, 103 P. 181. The latter case was a:

> "* * * proceeding to test the validity of the Primary Election Act of March 24, 1909."

At page 789 the court said:

> "The act provides for the payment of certain fees by candidates on filing with the proper officer their nomination papers and affidavits of candidacy. These fees apply to all nominees—state, district, county, and municipal—and range from fifty dollars to be paid by a candidate for state office to ten dollars to be paid by county, legislative, or municipal officers, where the selection of candidates for municipal office is held under the primary law."

These fees are provided for by Section 7 of the act, Stats. 1909, chapter 405, page 691 at page 696. Considering the purchasing power of the dollar in 1909 these fees are no lower than those presently required. For example, in 1909 the salary of the Governor was ten thousand dollars per year. Political Code § 384 as am. Stats. 1909, ch. 271 p. 414. (now $49,000, Gov. Code § 12000); lieutenant governor, four thousand dollars, Pol. C. § 397 as am. Stats. 1909, ch. 453 p. 783 at p. 784. (now $35,000, Gov. C. § 11552.5); Secretary of State, Controller, Treasurer, and Superintendent of Public Instruction, five thousand dollars per year, Political Code Sections 417 (am. Stats. 1909, ch. 239, p. 366) 438 (am. Stats. 1909,

ch. 451, p. 782), 455 (am. Stats. 1909, ch. 450 p. 782) 513 (am. Stats. 1909 ch. 366 p. 604) respectively. Each of these officers now receive seven times that amount, $35,000, Gov. Code § 11552.5. Supervisors of the County of Los Angeles received annual salaries of $2400.00 per year. Pol. C. § 4231, paragraph 14, am. Stats. 1909, ch. 374 p. 610 at bottom of page 617. Their salary now is the same as a judge of the Superior Court of this County. Article II, Section 4 of the Charter of the County of Los Angeles as amended by Stats. 1953, res. ch. 5 p. 3781 at p. 3783. In 1909 State Senators and Assemblymen received one thousand dollars for each regular session (only one every two years) plus ten dollars per day during special sessions. State Constitution Art. IV, Sec. 23, as am. Nov. 3, 1908. They now receive $19,200 per year. Gov. C. § 8901.

At pages 789 and 790 the court said:

> "It is provided in the act that these fees are to be paid into the county or municipal treasury when they are paid by county or municipal candidates, and when paid by candidates for state or district nominations are to be apportioned and paid by the state treasurer to the county treasurer of the counties in which such candidates are to be voted for. The validity of this provision requiring the payment of fees is sustainable under the constitutional amendment, as being within the power of the legislature to provide reasonable conditions for the exercise of the rights granted by the primary law. As said by one court to which this question was presented: 'The right to exact a reasonable fee for the privilege for running for office may be sustained, on the principle that fees in actions and proceedings in courts, and for filing and recording papers, are sustainable; namely, that those who seek the benefit of a particular proceeding provided by law may be compelled to reimburse the state for a portion of the costs the state incurs in maintaining the instrumentality to carry into effect the particular proceeding. In other words the state asks the candidate for office under a particular law to reimburse it for a

part of the expenses it incurs in carrying that law into effect. This clearly the state may lawfully do.' (*State* v. *Nichols*, 50 Wash. 508, [97 Pac. 728, 730].)

"Aside from this, such a provision is a reasonable restriction and provides an orderly and systematic method by which the people may select their candidates for public office. The exaction of a fee tends to prevent an indiscriminate scramble for office. Where it is fixed at an amount that will impose no hardship upon any person for whom there should be any desire to vote as a nominee for any office, and yet enough to prevent the wholesale filing of petitions for nominations of any one regardless of whether or not he is a desirable candidate. It is but a reasonable means adopted by the legislature to regulate primary elections for the selection of candidates for public office. And the constitutional provision that no property qualification shall be required of any person to vote or hold office is not violated by such provision as to the payment of a fee, but is a reasonable regulation prescribed by the legislature on the wise assumption that any candidate who is of sufficient worth to stand before the people as a candidate for public office and whose candidacy calls for the payment of the fee required by the act will be at no difficulty to pay the required amount. (*State* v. *Scott*, 99 Minn. 145, [108 N.W. 829]; see, also, *Montgomery* v. *Schlef*, 118 Ky. 766, [82 S.W. 389].)"

B. Socialist Party v. *Uhl has been Cited with Approval within the Last Two Years.*

Although what we have quoted was quoted in our Points and Authorities in the Superior Court, the petitioner ignores the case. If pressed to comment he might attempt to distinguish *Socialist Party* v. *Uhl*, *supra* on the ground that it was decided many years ago but it has been cited with approval within the last two years. It was cited in *Fowler* v. *Adams* (D.C.M.D. Fla. 1970) 315 F.Supp. 592 at 594 as authority to sustain the statement that the majority view sustained the imposi-

tion of reasonable fees, in that case five per cent of one year's salary.

In *Bullock* v. *Carter, supra,* the United States Supreme Court held the fees imposed by Texas unreasonably large and therefore void but said that a reasonable fee could be imposed. That was the conclusion of Circuit Judge Thornberry in the court below, *sub nominee Carter* v. *Dies* (U.S.D.C.N.D. Texas Dec. 21, 1970) 321 F.Supp. 1358 at 1364 where he said that reasonable fees could be imposed citing, in Footnote 6 *Socialist Party* v. *Uhl, supra* and *State ex rel. Riggle* v. *Brodigan* (1914) 37 Nev. 492, 143 P. 238 at 239, which latter case also cited and followed *Socialist Party* v. *Uhl, supra.*

Socialist Party v. *Uhl, supra* has never been reversed or overruled.

C. This Court has Upheld the Present Filing Fees.

Present Sections 6552 and 6554 of the Elections Code have been held constitutional also, by the Supreme Court of this State. On March 18, 1964 Nancy Cross and Ariel Sloan filed an original proceeding in the Supreme Court of this State, *Cross* v. *Bruning,* S.F. 21655 attacking, in sub-paragraph 2 of Paragraph III on page 7 of their petition numerous sections of the present Elections Code including Sections 6552 and 6554. On page 16 of their Points and Authorities the petitioners said:

> "This Court has expressed its will that those most immediately in jeopardy by relation to misfortune may not be taxed for governmental operations inuring to the general in the circumstances. Some parallel may be observed in prescription of the exaction of fees bearing no relation to the cost of nomination papers as a condition of simply taking out nomination papers. * * *"

Then then cited *People* v. *Election Commissioners,* 221 Ill. 9 at 21, 77 N.E. 321; *State* v. *Drexel,* 74 Neb. 776, 105 N.W. 174, 179; *Johnson* v. *Grand Forks County,* 16 S.Dak. 363, 113 N.W. 1071, all of which invalidated certain election filing fees and all of which were cited by *Socialist Party* v. *Uhl, supra* (1909) 155 Cal. 776 at

bottom of page 790, and distinguished or disapproved. This Court without opinion denied the petition on March 25, 1964.

Nancy Cross then appealed to the Supreme Court of the United States which dismissed her appeal on December 7, 1964. 379 U.S. 202, 85 S.Ct. 340, 13 L.Ed.2d 339.

On October 4, 1967, she filed a complaint against Bruning in the United States District Court, Northern District of California, again challenging the constitutionality of Section 6552 and other sections of the Elections Code. The District Court dismissed the action on November 24, 1967, for lack of jurisdiction and for failure to state a claim upon which relief can be granted. An appeal was filed with the Ninth Circuit Court of Appeals. At page 2 of her opening brief she stated she sought a judicial decree enjoining the enforcement of California Elections Code Sections * * *.

She then listed nineteen sections including Section 6552. At pages 3 and 4 she said:

> "b. As a condition of obtaining nomination papers of actual value about 25¢ (thus distinguished from filing them after collection of signatures, or from receiving a certificate of election or nomination after an election), require payment of a percentage of the salary from the United States Treasury to a Representative to Congress. The amount is 1% of $30,000, or $300. The payment is nonrefundable. * * * The $300 fee for nomination papers . . . highly discriminates against persons of present economic status * * *."

In quoting from the briefs in these cases we have followed the example of a number of reported cases which have examined the briefs in cases cited to determine what has been decided.

People v. *United National Life Ins. Co.* (1967) 66 Cal.2d 577 at 594, 58 Cal.Rptr. 599 at 610;

People v. *Western Air Lines* (1954) 42 Cal.2d 621 at 647 (Appeal dismissed, 348 U.S. 859, 75 S.Ct. 87, 99 L.Ed. 677);

American River Flood Control District v. *Sweet* (1932) 214 Cal. 778 at 782, 783;
Saks & Co. v. *City of Beverly Hills* (1951) 107 Cal. App.2d 260 at 267, 237 P.2d 261;
Simmons v. *Inyo Cerro Gordo Mining and Power Co.* (1920) 48 Cal. App. 524 at 532.

In 1969 the Court of Appeals held that it was bound by the dismissal of the appeal in the state case of *Cross* v. *Bruning, supra*, 379 U.S. 202, 85 S.Ct. 340, 13 L.Ed. 2d 339, and affirmed the judgment, saying, 413 F.2d 678 at 679:

> "* * * On March 18, 1964, the plaintiff Cross * * * filed a petition in the Supreme Court of California, pursuant to California Elections Code § 6403. In that petition Cross asserted that numerous sections of the California statutes governing elections were unconstitutional and prayed that the Supreme Court of California declare them unconstitutional, as in violation of the Constitution of the United States. The Supreme Court of California, after a hearing, but without opinion, denied Cross' petition on March 25, 1964, and denied a rehearing on April 25, 1964. Cross, on July 27, 1964 filed in the Supreme Court of California her notice of appeal to the Supreme Court of the United States, pursuant to Section 1257(2) of Title 28 U.S. Code. In her 'Statement as to Jurisdiction' in her appeal to the Supreme Court Cross cited seventeen sections of the California Elections Code as being the most significant of the statutes, the constitutionality of which she attacks. She then cited six additional sections of California statutes, as being relevant, as well as thirteen sections of the Constitution of California. The Supreme Court of the United States, in Cross v. Bruning, 379 U.S. 202, 85 S.Ct. 340, 13 L.Ed.2d 339, on December 7, 1964, dismissed her appeal for want of jurisdiction.
>
> " * * Since the Supreme Court of California dismissed the plaintiff's petition, thereby deciding in favor of the California statutes which were attacked in the plaintiff's petition, she was entitled, under

Title 28 of the United States Code, Section 1257 (2), to get to the Supreme Court of the United States by appeal, if her appeal presented a substantial federal question. * * * Since the Supreme Court had the case under its obligatory jurisdiction; i.e., by appeal, its dismissal of the case for want of jurisdiction was a dismissal on the merits, for failure to present in the jurisdictional statement, a substantial federal question."

The United States Supreme Court denied certiorari, 396 U.S. 970, 90 S.Ct. 455, 24 L.Ed.2d 437, and denied a rehearing, 396 U.S. 1063, 90 S.Ct. 760, 24 L.Ed.2d 757.

III

MAJORITY OF CASES SUSTAIN THE IMPOSITION OF REASONABLE FEES.

A. *The Fees in California have been Held to be Reasonable.*

Cross v. *Bruning, supra* (1964) S.F. 21655 (appeal dismissed 379 U.S. 202, 85 S.Ct. 340, 13 L.Ed.2d 339) as interpreted by *Cross* v. *Bruning, supra* (C.C.A. 9, Cal. 1969) 413 F.2d 678 (certiorari denied, 396 U.S. 970, 90 S.Ct. 455, 24 L.Ed.2d 437, rehearing denied, 396 U.S. 1063, 90 S.Ct. 760, 24 L.Ed.2d 757), necessarily held that the fees now imposed by the Elections Code were reasonable. So did *Haag* v. *The State of California* (U.S.D.C. C.D. Calif. 1970) No. 70-426-R (unreported).

B. *Five Per Cent of the Annual Salary has been held to be a Reasonable Fee.*

Requirements in the State of Florida that a candidate pay a fee of five per cent of the annual salary have been held to be reasonable in a number of cases.

Spillers -. *Slaughter* (U.S.D.C.M.D. Fla. 1971) 325 F.Supp. 550 in which at page 553 the court held that there was a compelling state interest requiring the fee. (Under the title *Pope* v. *Haimowitz* (U.S. 1971) 404 U.S. 806,

30 L.Ed.2d 37 the United States Supreme Court vacated the judgment and remanded the case to the District Court with directions to dismiss as moot.)

Wetherington v. *Adams* (D.C.N.D. Fla. 1970) 309 F.Supp. 318;

Fowler v. *Adams* (D.S.M.D. Fla. 1970) 315 F.Supp. 592 at 594;

Diffenderfer v. *Porter Homer* (D.C.S.D. Fla. No. 68-455, Cic.E.C.), unreported but cited by *Spillers* v. *Slaughter, supra;*

Bodner v. *Gray* (Fla. 1961) 129 So.2d 419 at 420, 89 A.L.R.2d 860 at 863 (and note annotation at page 864.)

C. *Other Cases Uphold the Imposition of a Reasonable Fee.*

At page 3 petitioner cites *Chote* v. *Brown* (U.S.D.C.N.D. Calif. March 9, 1972, No. 72380) and subsequently other federal cases holding *any* filing fee unconstitutional. Of course, this Court is:

"* * * not bound by the decisions of the lower federal courts even on federal questions. * * *"

People v. *Bradley* (1969) 1 Cal.3d 80 at 86, 81 Cal. Rptr. 457, 460 P.2d 129.

To the same effect is *People* v. *Stout* (1971) 18 Cal.App. 3d 172 at 175, 95 Cal.Rptr. 593.

In *Chote* v. *Brown, supra,* the dissenting opinion of the judge of the Court of Appeal is far more persuasive than the opinion concurred in by the two district judges. Conceding that federal cases may be persuasive we already have cited at pages 13, 19, and 20, *supra* federal cases upholding the imposition of reasonable fees. In addition thereto, note:

Montgomery v. *Chelf* (Ky. 1904) 82 S.W. 388 at 390;

Kenneweg v. *Allegheny County Com'rs.* (1905) 102 Md. 119, 62 A. 249;

State ex rel. Thompson v. *Scott* (1906) 99 Minn. 148, 108 N.W. 828 at 829;

State ex rel. Riggle v. *Brodigan* (1914) 37 Nev. 492, 143 P. 238 at 239 (citing and relying upon *Socialist Party* v. *Uhl, supra*);

McLean v. *Durham County Board of Elections* (1942) 222 N.C. 6, 21 S.E.2d 842 at 845 (also citing and relying upon *Socialist Party* v. *Uhl, supra*);

State ex rel. Zent v. *Nichols* (1908) 50 Wash. 508, 97 P. 728 at 730.

We already have the annotation in 89 A.L.R.2d 864.

IV

THERE IS A COMPELLING STATE INTEREST THAT THERE BE A FILING FEE.

We have been shown a letter from a high school principal in which he says that, as a class project, all of his students who are eligible to do so, are going to run for public office. As said in *Merced Falls Gas and Electric Company* v. *Turner* (1906) 2 Cal. App. 720 at 725:

> "* * * This statement cannot be considered as a fact in the case, but it serves to illustrate the consequences which would inevitably follow the application of the doctrine for which appellant [petitioner] contends. * * *"

If it be held either that no candidate need pay a filing fee or that a candidate who submits an affidavit of poverty, the truth of which the Registrar-Recorder has no way of checking, may file without the payment of any fee we can anticipate a large number of filings "just for a lark" where the candidates are not serious and will conduct no campaigns. Incidentally what are petitioner's campaign plans?

At the bottom of page 7 of his Points and Authorities petitioner begins:

> "By focusing upon this factor of one's wealth * * *."

This is just not so. The Elections Code excludes a person not because he is poor but because he has not paid

the fee. A poor person who obtains the fee from others, such as from persons who intend to support his candidacy, is not excluded from the ballot.

At page 7 of his Points and Authorities petitioner says:

> "The California Elections Code provides no alternatives to paying the filing fees in order to qualify for election. Even before write-in votes will be counted, the filing fees must be paid under Elections Code Section 6555."

This is not so. Section 6555 reads:

> "6555. When a person for whom a declaration of candidacy has not been filed is nominated for an office by having his name written on the ballot, he shall pay the same filing fee that would have been required if his declaration had been filed. If he does not pay that fee his name shall not be printed on the ballot at the ensuing general election."

It is clear that the write-in votes *are* counted before the filing fee is required. If a candidate receives sufficient votes to be nominated for a nonpartisan office, either a plurality or more votes than any candidate except the candidate with a plurality, by reason of such success there should be no difficulty in obtaining from supporters the filing fee.

At page 5, in referring to persons without any money, petitioner says:

> "* * * Denied access to seek public office, they are denied the ability to use elections and the electoral process as a means of drawing the public's attention to their plight, to the causes which create poverty and the problems that accompany them."

Considering the immense amount of legislation both in Congress and in this State on welfare and in other ways attempting to alleviate the plight of the poor it is clear that they have been represented adequately. How far would petitioner press this argument? Must the mediocre, the stupid, even the mentally retarded be represented by their peers? Must five year olds be represented? In

making these observations, we do not concede, of course, that a poor person is necessarily unable to obtain the filing fee.

EHG/ec
3/17/72

[Proof of Service Omitted in Printing]

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

L.A. No. 29982

[Filed Mar. 22, 1972, G. E. Bishel, Clerk,
————————, S. F. Deputy]

LUBIN, Individually, etc.,

v.

ALLISON, as Registrar-Recorder, etc.

ORDER DENYING ALTERNATIVE WRIT

Petition for writ of mandamus denied.

/s/ Wright
Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 71-6852

DONALD PAUL LUBIN, ETC., PETITIONER

v.

JAMES S. ALLISON, Registrar-Recorder, County of Los Angeles

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for a writ of certiorari be, and the same is hereby, granted. In addition to the questions presented in the petition the parties should address themselves to the question of whether it is the candidate's indigency or the indigency of his supporting group that is the relevant issue in this case.

May 7, 1973

* U. S. GOVERNMENT PRINTING OFFICE: 1973 506060 694